

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE: SMITH & NEPHEW
BIRMINGHAM HIP RESURFACING
(BHR) HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

MDL-17-md-2775
Hon. Catherine C. Blake

This Document Relates to
Gary Fisher; Case No. 1:18-cv-00327

SHORT FORM COMPLAINT

SHORT FORM COMPLAINT

1. Plaintiff, Gary Fisher, states and brings this civil action in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff is filing this Short Form Complaint pursuant to CMO No. 3 entered on August 3, 2017, and amended on November 2, 2017 by this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is a resident of Ohio and claims damages as set forth below.

3. ~~Plaintiff's Spouse _____ is a resident and citizen of _____ and claims loss of consortium damages as set forth below.~~

4. Federal jurisdiction is proper based on diversity of citizenship.

5. The Federal District in which Plaintiff's initial implant took place: Southern District of Ohio.

6. The Federal District in which Plaintiff's revision surgery took place: Southern District of Ohio.

7. Plaintiff brings this action *[check the applicable designation]*:

X On behalf of himself.

~~_____ In a representative capacity as the _____ of the
_____ having been duly appointed as the _____ by the
_____ Court of _____. A copy of the Letters of
Administration for a wrongful death claim is annexed hereto if such letters are
required for the commencement of such a claim by the Probate, Surrogate or other
appropriate court of the jurisdiction of the decedent.~~

~~[Cross out if not applicable.]~~

FACTUAL ALLEGATIONS

8. On or about October 5, 2010, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System or component part was implanted into Plaintiff's (LEFT/RIGHT) hip.

9. ~~_____ [IF BILATERAL]: On or about _____, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's (LEFT/RIGHT) hip.~~

10. Plaintiff's (LEFT/RIGHT) BHR implant surgery was performed at Good Samaritan Hospital in Cincinnati, Ohio by Dr. Mark Snyder.

11. Plaintiff underwent medically-indicated revision of the BHR hip implant on or about May 22, 2015.

12. Plaintiff suffered the following complications, injuries, and/or indications, some or all of which made revision surgery medically necessary: pain and suffering, including but not limited to left hip pain; discomfort; elevated chromium levels; interference with activities of daily living.

13. Plaintiff's revision surgery was performed by Dr. Michael L. Swank at The Jewish Hospital/Mercy Health in Cincinnati, Ohio.

14. Plaintiff adopts the allegations of the Master Amended Consolidated Complaint ("MACC") filed August 11, 2017, and any and all amendments to the MACC.

15. Notwithstanding the foregoing, Plaintiff does not adopt the following paragraphs of the MACC: _____.

16. Notwithstanding the foregoing, Plaintiff additionally alleges that: _____
_____ Plaintiff incorporates by reference all allegations made in his initially filed Complaint.

ALLEGATIONS AS TO INJURIES

17. (a) Plaintiff claims damages as a result of (check all that are applicable):

 X INJURY TO HERSELF/HIMSELF
_____ INJURY TO THE PERSON REPRESENTED
_____ WRONGFUL DEATH
_____ SURVIVORSHIP ACTION
 X ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable):

[Cross out if not applicable.]

~~_____ LOSS OF SERVICES~~
~~_____ LOSS OF CONSORTIUM~~

18. Defendant, by its actions or inactions, proximately caused the injuries to Plaintiff.

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

19. The following claims and allegations are asserted by Plaintiff and are herein adopted by reference (check all that are applicable):

X COUNT I (Strict Products Liability: Ohio)

 COUNT II (Negligence: Ohio)

 X COUNT III (Strict Products Liability Failure to Warn: Ohio)

 COUNT IV (Negligent Failure to Warn: Ohio)

 X COUNT V (Negligent Misrepresentation: Ohio)

 COUNT VI (Negligence Per Se: Ohio)

 COUNT VII (Breach of Express Warranties: Ohio)

 X COUNT VIII (Manufacturing Defect: Ohio)

 X COUNT IX (Punitive Damages: Ohio)

In addition to the above, Plaintiff asserts the following additional causes of action under applicable law:

Strict Products Liability - Defective Manufacturing (O.R.C. § 2307.74 et seq.); Strict Product Liability - Design Defect (O.R.C. § 2307.75 et seq.); Strict Product Liability - Defect Due to Inadequate Warning (O.R.C. § 2307.76 et seq.); Strict Product Liability - Defect Due to Nonconformance with Representations (O.R.C. § 2307.77 et seq.); Fraudulent/Negligent Misrepresentation (Ohio Common Law).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;

6. Equitable relief in the nature of disgorgement; and
7. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all claims in his Complaint so triable.

Dated: April 10, 2018

Respectfully submitted,

/s/ Calvin S. Tregre, Jr.
Calvin S. Tregre, Jr.
BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.
312 Walnut Street, Suite 2090
Cincinnati, OH 45202
Phone: (513) 852-5600
Facsimile: (513) 852-5611
Email: ctregre@burgsimpson.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of April, 2018, I electronically filed the foregoing with the Clerk of the Court utilizing the Court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Calvin S. Tregre, Jr.
Calvin S. Tregre, Jr.
Attorney for Plaintiff